IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4556 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIJAY SUKHLALBHAI JAIN

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 4556 of 2003

MR PK JANI for Petitioner No. 1

MR M R MENGDEY AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/10/2004

ORAL JUDGEMENT

1. The petitioner herein has preferred this petition in order to quash and set aside Condition No.2 of the

Government Resolution / Circular dated 25/02/2003, at Annexure-L to the petition.

2. The petitioner is a dealer of Free Sale Kerosene, popularly known as "white kerosene". This kerosene which is imported by the importers is sold to the dealers at the port, and thereafter, the said dealers sell the kerosene to sub-dealers. The sub-dealers in turn sell the same to persons who are in need of the said material.

3. The State Government vide Circular dated 25/02/2003, imposed two Conditions for the regulation of the supply of the said kerosene. One is that the dealer or the sub-dealer was required to first of all inform the office of the Food and Civil Supplies Department about the receipt of every day stock and get it registered. A dealer of sub-dealer was required to inform the Controller of Food and Civil Supplies as to whom the said kerosene was to be sold. Second, after selling the same, a certificate was to be obtained from the said person that he used the same for the purpose for which it was purchased. It is these conditions which are under challenge before this Court in this petition.

4. Mr.M R Mengdey learned AGP has submitted that with a view to restrict the misuse of free sale kerosene and to see that the local market was not affected, such conditions have been imposed by the State Government.

5. I have heard learned counsel for the parties. On going through the said Circular of the State Government, it is clear that the conditions imposed, through the said circular, are highly unreasonable. Such conditions hinder the smooth movement of trade to a great extent. Moreover, the kerosene in question being an essential commodity, the imposition of such restrictions is also not feasible. Such conditions are violative of the principles enunciated in Article 19(1)(g) of the Constitution, and hence, are required to be quashed and set aside.

6. In the result, the petition is allowed. Condition no.2 of the Government Resolution / Circular dated 25/02/2003, at Annexure-L to the petition, is quashed and set aside. Rule is made absolute accordingly. Ad-interim relief granted earlier stands vacated.

(K. S. Jhaveri, J.)

pravin/